

In the Matter of Merchant Mariner's Document No. Z-275317 and all
other Seaman Documents
Issued to: HOWARD K. McNAB

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1026

HOWARD K. McNAB

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 8 October 1957, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's seaman documents upon finding him guilty of misconduct. the specification found proved alleges that while serving as Boatswain on board the American SS MALLORY LYKES under authority of the document above described, on or about 27 July 1957, Appellant assaulted and battered a member of the crew, oiler Donald C. Coleman, with a broken bottle. Two other specifications found proved by the Examiner allege the lesser included offense of assault and should have been dismissed by the Examiner. The latter two specifications are therefore dismissed without further consideration.

At the hearing, Appellant was represented by professional counsel of his own choice and he entered a plea of not guilty to the charge and each specification. The Investigating Officer introduced in evidence the testimony of the Chief Mate, who was an eyewitness to the incident in questions, and two other witnesses. Appellant testified in his defense. He admitted cutting Coleman with a broken bottle but claimed that this was done while Appellant was acting in self-defense when he thought he was going to be hit with a chair by Coleman. A single witness who appeared for Appellant testified that he saw Appellant with a broken bottle and that Coleman has been cut, but he did not see how it happened.

After considering the evidence, the Examiner concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant. The decision was served on 10 October 1957. Appeal was timely filed on 29 October 1957.

FINDINGS OF FACT

On 27 July 1957, Appellant was serving as Boatswain on the American SS MALLORY LYKES and acting under authority of his Merchant Mariner's Document No. Z-275317 while the ship was anchored off Nasipit, Mindanao Island, Philippines.

At approximately 2330 on this date, Donald C. Coleman, an oiler on the ship, entered an open front barroom and sat at a table about five feet from the table where Appellant was sitting. Both men had been drinking during the day. Coleman made a statement to the effect that everybody could have a drink if each person paid for his own. Although Coleman was a much larger man than Appellant, the latter took exception to the remark, called Coleman a "cheap skate," and a loud argument, containing a considerable amount of abusive language, followed between the two seamen while they remained seated. After a few minutes of arguing, Appellant got up, picked up a full bottle of beer from a shelf located about ten feet from Coleman, broke the bottle on a nearby ledge and walked rapidly toward Coleman holding the remains of the bottle. As Appellant jabbed at Coleman with the jagged edges, Coleman put up his left hand to protect his face. The bottle struck Coleman on the back of his hand inflicting deep wounds. The force of the blow knocked Coleman to the floor. The local police were summoned to restore order.

Coleman received medical treatment at a nearby hospital and returned to the ship but he was unable to perform his duties as a result of the injuries to his head. Coleman was removed from the vessel, on 15 August 1957, for hospitalization at San Pedro, California, which was the ship's first port of call in the United States. At this time, Coleman had almost completely lost the use of several fingers. The exact nature and extent of the injuries are not contained in the record since Coleman was not at the hearing.

Appellant has no prior disciplinary record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant requests clemency on the basis of his prior clear record during fourteen years' service and also because this was not a premeditated act, with the necessary intent, due to Appellant's intoxication.

OPINION

The specification was proved by substantial evidence consisting primarily of the Chief Mate's testimony. He not only was a disinterested witness, whose testimony was accepted by the

Examiner, but the reliable nature of his testimony is shown by the fact that the record indicates that he was in a more sober condition than the two participants and other members of the crew who were present.

The evidence that Appellant advanced upon Coleman with a jagged bottle nullifies Appellant's claim that he acted in self-defense. Appellant's intoxication is no excuse for this vicious attack with a dangerous weapon. Furthermore, the fact that Appellant took time to break the bottle indicates some element of premeditation and intent as well as furnishing an additional reason why his plea of self-defense should be rejected.

In any event, Appellant's conduct in this one instance, whether or not he realized what he was doing at the time, is sufficient proof of such a dangerous disposition as to justify the order of revocation so as to prevent a possible recurrence of similar action by Appellant while serving on a merchant vessel of this country. The serious injuries suffered by Coleman would probably have been even more severe if he had not protected his face with his hand. Other seaman should not be required to take such a chance despite Appellant's otherwise clear record.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 8 October 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, U.S. Coast Guard
Commandant

Dated at Washington, D. C., this 18th day of April, 1958.